

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8411 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HANSABEN WIFE OF DILIP

ISHWARBHAI PARMAR

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR MA BUKHARI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/12/1999

ORAL JUDGEMENT

#. The Commissioner of Police, Ahmedabad City, Ahmedabad passed an order on 5th April, 1999, detaining the petitioner under the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short), in exercise of powers under Section 3(1) thereof.

#. The detaining authority took into consideration five offences registered against the detenu under the Bombay Prohibition Act and came to conclusion that the detenu is a bootlegger as defined under the PASA Act. The authority also considered statements of two anonymous witnesses and exercised powers under Section 9(2) of the PASA Act of not disclosing identity of the witnesses. The authority also recorded that the witnesses had genuine apprehension from the detenu in respect of person and property and, therefore, the powers were exercised. The detaining authority, after considering the possibility of resorting to less drastic alternative remedy, formed the opinion that detention under PASA Act is the only remedy that may prove to be efficacious for immediately preventing the petitioner from pursuing her illegal and anti-social activities.

#. The detenu has challenged the detention on various counts. The only ground that is urged on behalf of the petitioner is that the statements of anonymous witnesses were recorded, verified and order was passed on 5th April, 1999. This reflects that the order is passed mechanically and the powers exercised under Section 9(2) of the PASA Act are not exercised properly. The detention, therefore, would stand vitiated and the petition may be allowed.

#. Mr. Bukhari, learned Assistant Government Pleader appearing for the respondents, has opposed this petition. He urged that the detaining authority has passed the order after personally verifying the genuineness, correctness and veracity of the incidents narrated in the statements of witnesses in respect of unregistered offences and, after being satisfied that the fear expressed and the apprehension shown by the witnesses are quite proper, real, genuine and reasonable that the order was passed. This is reflected in paragraph 8 of the affidavit in reply and, therefore, the petition may be dismissed.

#. In view of the rival side contentions, it requires to be determined as to whether the subjective satisfaction recorded by the detaining authority for exercise of powers under Section 9(2) can be said to be genuine.

1.1 The statements were recorded, verified and the order was passed on 5th April, 1999. There was, therefore, no time lag between these events which could have made possible for the detaining authority to arrive

at a genuine subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act. The powers under Section 9(2) of the PASA Act are required to be exercised in public interest and for that purpose, the authority has to satisfy itself that the incidents narrated by the anonymous witnesses are correct and the fear expressed by these witnesses qua the petitioner is genuine and that, therefore, it is necessary to exercise the powers under Section 9(2) of the PASA Act. This will have a bearing not only on the question of public interest, but also on the right of the detenu of making an effective representation which is guaranteed by the Constitution and any error or lapse found in exercise of such power would render the order of detention bad in law. The subjective satisfaction required to be recorded by the detaining is not by way of an empty formality and the authority has to take steps apart from interrogating the witnesses to satisfy itself that the incidents narrated by the witnesses and the fear expressed by the witnesses are correct and genuine. If the statements were recorded, the same were verified and the order was passed on 5th April, 1999, there was no reasonable time lag between these events which would enable the detaining authority to undertake this exercise. In this regard decision in case of Kalidas Chandubhai Kahar v. State of Gujarat [1993(2) GLR, 1659] may be profitably used.

#. The affidavit in reply also does not disclose as to what exercise undertaken by the detaining authority for arriving at a subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act. It is true that the subjective satisfaction cannot be judged by a Court and whether the material before the detaining authority was sufficient or not cannot be gone into by the Court. But whether there was cogent material to arrive at the subjective satisfaction has to be examined and in absence of any such material, the subjective satisfaction cannot be said to have been genuinely arrived at. This would render the impugned order bad in law.

#. In view of the above discussion, the petition is allowed. The order of detention in respect of the petitioner-Smt. Hansaben, wife of Dilip Ishwarbhai Parmar, dated 5th April, 1999, is hereby quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L. DAVE, J.]

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